93-588

No. _____

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1993

DONALD L. KREN
Petitioner,

vs.

CITY OF SPRINGFIELD, ILLINOIS
Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE APPELLATE COURT OF ILLINOIS FOURTH JUDICIAL DISTRICT

PETITION FOR WRIT OF CERTIORARI

DONALD L. KREN
1632 LOVELAND
SPRINGFIELD, IL 62703
(217) 522-7934

QUESTIONS PRESENTED FOR REVIEW

I. Have not citizen Kren's Rights guaranteed under the Constitution of the United States, Including right to due process, liberty, and equal applicatic.. of the law been denied by proceedings to date?

II. Is not the Illinois Appellate Court's allowance of the City's motion to strike and dismiss "substantive denial" of equal protection of the law, a right protected by the 14th Amendment to the Constitution of the United States?

III. Does this procedural striking of Kren's appeal deny Kren access to the courts on the merits of an appeal in which rights protected by the constitution are to be decided, thus denying to Kren substantive due process.

LIST OF ALL PARTIES WHOSE JUDGEMENT IS SOUGHT TO BE REVIEWED

I. Illinois Appellate Court
Fourth Judicial District
Panel Consisting Of:
Judge Frederick S. Green
Judge Carl A. Lund
Judge Robert J. Steigmann
Supreme Court Building
Springfield, Illinois 62701-1792
(217) 782-2586
Clerk of the Court Daryll Pratcher
Appellate # 4-92-0863

OTHER COURTS INVOLVED

I. Sangamon County Circuit Court
Seventh Judicial Circuit
Judge John Mehlick
Sangamon County Complex
200 South 9th Street
Springfield, Illinois 62702
(217) 753-6600
Clerk of the Court Candice Trees
Trial Court Case # 91-OV-141

II. Illinois Supreme Court
Supreme Court Building
Chief Justice Ben K. Miller
Springfield, Illinois 62706
(217) 782-2035
Clerk of the Court Juleann Hornyak
Supreme Court # 75123

TABLE OF CONTENTS

I.	Questions Presented For Review	pg. i
II.	List of All Parties Whose Judgement Is Sought To Be Reviewed.	pg. ii
III.	Table of Authorities	pg. vi
IV.	Reference To The Official and Unofficial Reports	pg. 1
V.	Jurisdictional Statement	pg. 3
VI.	The Constitutional Provisions, Statutes, Ordinances, and Regulations Involved in the Case.	pg. 4

TABLE OF CONTENTS, CONTINUED

VII. Concise Statement of the Case Containing the Facts Material to the Consideration of the Question Presented. pg. 8

VIII. Concise Statement of the Case Containing the Facts Material to the Consideration of the Questions Presented. pp. 10

IX. A Direct and Concise Argument of Reasons Relied On for the Allowance of the Writ. pg. 16

X. Conclusion pg. 18

TABLE OF AUTHORITIES

I. RULES OF THE
SUPREME COURT OF THE UNITED STATES
JANUARY 1, 1990

II. THE UNITED STATES CODE ANNOTATED
CONSTITUTION
AMENDMENT 14
DUE PROCESS IN GENERAL
1993
SUPPLEMENTARY PAMPHLET

III. ILLINOIS CODE OF CIVIL PROCEDURE
AND
RULES OF THE SUPREME COURT
AS EFFECTIVE JANUARY 21, 1988

REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS

1. Opinion of Trial Court
   Appendix pp. 10-15

2. Appellate Court order allowing motion to strike and dismiss the appeal as untimely.
   Appendix pg. 1

3. Appellate Court order denying objection to allowance of motion to strike and dismiss.
   Appendix pg. 2

4. Appellate Court order denying motion to reconsider allowance of motion to strike and dismiss.
   Appendix pg. 3

5. Appellate Court order allowing corrections to objection to allowance of motion to strike and dismiss and overruling same. Appendix pg. 4

6. Appellate Court order denying request to reconsider allowance of motion to strike and dismiss. Appendix pg. 5

7. Illinois Supreme Court order denying petition for leave to appeal from Appellate Court. Appendix pg. 6

8. Illinois Supreme Court orders staying mandate until filing of petition for writ of certiorari. Appendix pp. 7-9

JURISDICTIONAL STATEMENT

Appellant's petition is for a writ of certiorari requesting that the United States Supreme Court review the Illinois Appellate Court order of 5 January 1993 allowing Appellee's 30 December 1992 Motion to Strike and Dismiss.

The Illinois Supreme Court did refuse to hear a request for a discretionary review in this matter.

Appellant's recourse is to petition this United States Supreme Court for a Writ of Certiorari.

This petition for a Writ of Certiorari is presented in accordance with;

Supreme Court Rule 10, 1(a),(b),(c)

U.S.C.: Constitution of the United States; Amendment 14, Section 1.

THE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

USCA Constitutional Amendment 14 § 1

(appendix pp. 111-142)

I. Generally

1) Historical

2) Construction

3) Construction with Federal Laws Generally

15) Purpose

18) Law Governing

21) Duty of State Courts

35) Reasonableness of Regulation

37) Elements of Due Process (violations generally)

II. Standards Or Tests

61) Generally

62) Balancing of Interests

63) Arbitrary or Capricious Action

64) Fairness or Justice

65) Rational Relationship

66) Shocking To Conscience

67) Strict Scrutiny (Generally)

68) Compelling State Interest

III. Rights Protected

91) Generally

92) Basic or Fundamental Rights

93) Vested Rights

95) Liberty

96) Property

112) Due Process

113) Just Compensation for Property

126) Access to Courts Generally

128) Miscellaneous Actions Preventing Access to Courts

130) Good Name and Honor

133) Privacy General

V. Methods Of Deprivation Generally

325) Defamations, Libel, or Slander by State Officials

VI. Methods of Deprivation Administrative Rules and

Regulations,

351) Generally

(see appendix pp. 109-110 and 111-142)

CONCISE STATEMENT OF FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

Kren is a U.S. Citizen and a lifelong resident of Illinois.

Kren was, at time of trial, the owner of property which had a non conforming use zoning variance, a legitimate property interest granted by the state and protected by the United States Constitution.

Kren, for 28 years a member of the Springfield Fire Department, had good standing and reputation in the community.

In Circuit court action, brought against Kren by the City, Kren suffered a property loss "zoning", and as a result of trial publicity, a loss of Liberty

"reputation".

Kren was not compensated for this taking.

Kren's appeal to the Illinois Fourth District Appellate Court was stricken procedurally as untimely by the allowance of the City's motion to strike and dismiss, and was not decided on the merits of the appeal.

Kren's objections to City's motion to strike and dismiss, evincing unequal protection of the law, and Kren's request to reconsider, were denied by the Illinois Appellate Court.

Kren petitioned the Supreme Court of Illinois for discretionary review.

The Supreme Court of Illinois chose not to hear Kren.

A CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

It is Kren's sincere belief that from its conception and to the present the City's action against Kren has relied for its success upon denial of Kren's fundamental rights guaranteed by the Constitution of the United States.

This action demanding removal of zoning granted by the city from property owned and used by Kren was based upon an abatement claimed by the city to have occurred several years prior to Kren's ownership. This claimed abatement, Kren believes, was known or should have been known by the city to be false. No evidence in support of any intention to abate was ever presented. On May 5 1992,

judgement in favor of the city at Circuit level arbitrarily and unjustly removed this zoning from Kren's property thus denying Kren the right to continued use of said property for welding and repairs, a legal use and part of the value of the property under the zoning as purchased but not under the new zoning imposed by the court. (appendix pp. 16-22)

Kren was not compensated for this taking of property use rights and despite being given ten days in which to conform to the new zoning, which Kren accomplished in less and which was verified by a court visit on 5 May 1992 (day of final judgement), Kren was fined $500.00. (appendix pg. 28-3)

In publicity during and after the trial Kren was accused of having turned a property into a "junkyard" despite

testimony that the opposite had occurred. The levy of a $500.00 fine, also publicized, removed all doubt to the unknowing public of Kren's guilt thus defaming Kren. Kren believes this negative publicity has resulted in his not receiving a promotion to Deputy Division Chief of the Springfield Fire Department, a position promised publicly to him by the Mayor of Springfield prior to trial. In addition to this career loss, Kren has also suffered a lowering of esteem in the eyes of the community. (appendix pp. 140-142)

On 13-may 1992, eight days after final judgement, Kren filed a post trial motion for a new trial in which motion the constitutional issue of denial of due process was complained of. This motion ran concurrently with subsequent post

trial motions, all were heard on 22 September 1992 and were overruled. (appendix pp. 16-22, 10-15 and 31)

On 22 October 1992, in timely fashion under Illinois law, Kren filed notice of appeal to the Illinois Appellate Court Fourth Judicial District.

Sixty-eight days following Kren's notice of appeal the City filed a motion to strike and dismiss alleging untimeliness by Kren. The Fourth Appellate Court allowed the City's motion and denied all subsequent objections to this motion made by Kren.

The failure by the Court to follow its own rules that apply to timeliness is substantive denial of due process, precluded by the 14th Amendment and complained of in Kren's corrected

objection to the City's motion to strike and dismiss. (appendix pp. 26-37 and 4)

The disparity of treatment by the Illinois Appellate Court of Kren's appeal concerning timeliness, and the treatment by other Illinois courts of time requirements for similar cases, is precluded by the equal protection provisions of the Fourteenth Amendment of the Constitution and was clearly complained of in Kren's 26 January 1993 request to reconsider, denied by the court on 01 February 1993.
(appendix pp. 38-62 and 5)

Kren subsequently petitioned for leave to appeal to the Illinois Supreme Court. Kren again complained of this disparity of application of the laws concerning timeliness of appeal.
(appendix pp. 63-108)

The Illinois Supreme Court denied Kren's petition for leave to appeal.
(appendix pg. 6)

These actions by the Illinois Courts effectively deny Kren's access to the courts to be heard on the merits of this case in which rights protected by the constitution are at stake.

A DIRECT AND CONCISE ARGUMENT OF REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. Kren's property rights, good name, and reputation were taken by Court action in an arbitrary and capricious manner in Trial Court, apparently with a zealous intent to accommodate the City and blind to truth and justice.

II. The Appellate Court did not consider State statutes governing timeliness in allowing the City's motion to strike and dismiss or in denying both corrected objections by Kren and his request for reconsideration as it did in other similar cases.

III. Justice has not been served by the Court's action and Kren's rights to substantive due process have been denied.

CONCLUSION

In conclusion, for the reasons stated above, Kren asks that this Supreme Court of the United States issue a writ of certiorari in this matter, and after strict review, return the matter to the appellate court of Illinois 4th district to be heard on the merits, or do any act deemed by this court to be in the best interest of justice.

DATED: October 7, 1993

Respectfully submitted,

Donald L. Kren

DONALD L. KREN,
Petitioner Pro Se